

REMARKS/ARGUMENTS

Initially, Applicants would like to express their appreciation to the Examiner for the detailed Official Action provided.

Upon entry of the above amendments claim 1 will have been amended and claim 6 will have been added. Claims 1-6 are currently pending. In regard to claim 1, Applicants submit that this claim contains amendments which are merely clerical in nature (e.g., for correcting grammatical errors) and have not been made for purposes of patentability. Applicants respectfully request reconsideration of the outstanding rejections, and allowance of all the claims pending in the present application.

In the Official Action, the Examiner has rejected claims 1-5 under 35 U.S.C. § 103(a) as being unpatentable over the newly-cited patent to OJIMA et al (U.S. Patent No. 5,147,361) in view of SCHARF (U.S. Patent No. 6,682,563); and

Claims 1-5 under 35 U.S.C. § 103(a) as being unpatentable over SCHARF in view of ERRICO et al. (U.S. Patent No. 6,780,186)..

Without acquiescing to the propriety of the Examiner's rejections, Applicants have amended independent claim 1 solely in order to expedite prosecution of the present application. In this regard, Applicants note that OJIMA and SCHARF fail to teach or suggest the combination of elements as recited in claim 1. In particular, claim 1 sets forth a rhombic vertebra body including, inter alia, a main body portion having a generally point symmetric shape around a point in which a first diagonal line connecting a pair of acute angle portions having acute angles opposing to each other, crosses a second diagonal line connecting a pair of obtuse angle portions having obtuse angles opposing to each other; a plurality of screw insertion holes provided on at least one of

the first and second diagonal lines of the main body portion, wherein the plurality of screw insertion holes includes all insertion holes provided on the main body portion, and wherein the plurality of screw insertion holes have substantially the same shape and size; and at least one spike extending continuously from the main body portion and provided on or near at least one of the first diagonal line and the second diagonal line.

Applicants submit that OJIMA and SCHARF, alone or in any proper combination, fail to disclose at least the above-noted combination of elements.

In this regard, the Examiner asserts that OJIMA discloses a vertebra body plate comprising a main body portion having a plurality of screw insertion holes. Additionally, the Examiner asserts that the screw holes are the same shape and size, and spikes extend from the body portion. However, the Examiner acknowledges that OJIMA does not disclose the body portion having a rhombic shape. Nevertheless, the Examiner takes the position that it would have been obvious to one of ordinary skill in the art to modify the acknowledged deficiencies of OJIMA with the purported teachings of SCHARF. However, Applicants submit that OJIMA discloses an "intermediate "narrow portion" connecting the vertebra connecting portions (see, Figure 1 of OJIMA). Additionally, in an alternative embodiment illustrated in Figure 4, the device of OJIMA is illustrated with the connecting portions have the same width as the intermediate portion (i.e., the generally rectangular shape). In other words, OJIMA does not disclose the intermediate portions being larger in width than the connecting portions. More particularly, Applicants submit that providing OJIMA with the rhombic shape illustrated in SCHARF, as suggested by the Examiner, would result in the intermediate portion

being wider than the vertebra connecting portions. Thus, OJIMA does not disclose at least the present claimed rhombic vertebra plate.

That is, OJIMA and SCHARF, alone or in any proper combination, do not disclose at least a main body portion having a generally point symmetric shape around a point in which a first diagonal line connecting a pair of acute angle portions having acute angles opposing to each other, crosses a second diagonal line connecting a pair of obtuse angle portions having obtuse angles opposing to each other; a plurality of screw insertion holes provided on at least one of the first and second diagonal lines of the main body portion, wherein the plurality of screw insertion holes includes all insertion holes provided on the main body portion, and wherein the plurality of screw insertion holes have substantially the same shape and size; and at least one spike extending continuously from the main body portion and provided on or near at least one of the first diagonal line and the second diagonal line.

In regard to the rejection which relies on SCHARF and ERRICO as a basis for rejection, the Examiner asserts that SCHARF discloses a rhombic vertebra body plate having a plurality of screw holes. Additionally, the Examiner asserts that the plate also includes spikes. However, the Examiner acknowledges that SCHARF does not disclose the holes having the same shape and size. Nevertheless, the Examiner asserts that it would have been obvious to one of ordinary skill in the art to supply the acknowledged deficiencies of SCHARF with the purported teachings of ERRICO (i.e., the Examiner asserts that ERRICO discloses holes having the same size and shape). However, Applicants submit that the present claimed invention is very different structurally from SCHARF and ERRICO. In this regard, Applicants submit that SCHARF discloses the

spikes 25 being connected directly to the spacer 20 (which has a generally rectangular shape) and NOT the plate 30 (i.e., the structural body, illustrated in Figure 3 of SCHARF, which the Examiner presumably considers to have a rhombic shape).

Therefore, SCHARF and ERRICO, alone or in any proper combination, do not disclose at least a main body portion having a generally point symmetric shape around a point in which a first diagonal line connecting a pair of acute angle portions having acute angles opposing to each other, crosses a second diagonal line connecting a pair of obtuse angle portions having obtuse angles opposing to each other; a plurality of screw insertion holes provided on at least one of the first and second diagonal lines of the main body portion, wherein the plurality of screw insertion holes includes all insertion holes provided on the main body, and wherein the plurality of screw insertion holes have substantially the same shape and size; and at least one spike extending continuously from the main body portion and provided on or near at least one of the first diagonal line and the second diagonal line. Accordingly, the rejection of claims 1-5 under 35 U.S.C. § 103(a) is improper and should be withdrawn.

In regard to new independent claim 6, Applicant submits that claim 6 is generally similar to independent claim 1 in that it recites, inter alia, a plurality of screw insertion holes provided on at least one of the first and second diagonal lines of the rhombic shaped body; and at least one spike extending continuously from and connected directly to the rhombic shaped body, the at least one spike being provided on or near at least one of the first diagonal line and the second diagonal line. Accordingly, independent claim 6 is allowable for reasons generally similar to independent claim 1, as discussed above.

Additionally, Applicant submits that new independent claim 6 recites additional patentable features of the presently-claimed invention. Support for new independent claim 6 can be found in at least Figures 1 -5 of the drawings. Accordingly, no new matter is believed to be added by the present amendment.

Further, Applicants also expressly incorporate all other arguments made in Applicants' previous Responses.

In view of the arguments herein, Applicant submits that independent claims 1 and 6 are in condition for allowance. With regard to dependent claims 2-5, Applicant asserts that they are allowable on their own merit, as well as because they depend from independent claim 1, which Applicant has shown to be allowable.

Thus, it is respectfully submitted that all of the claims in the present application are clearly patentable over the references cited by the Examiner, either alone or in combination, and an indication to such effect is respectfully requested, in due course.

SUMMARY

Applicants submit that the present application is in condition for allowance, and respectfully request an indication to that effect. Applicants have argued the allowability of the claims and pointed out deficiencies of the applied references. Accordingly, reconsideration of the outstanding Official Action and allowance of the present application and all the claims therein are respectfully requested and is now believed to be appropriate.

Applicants note that this amendment is being made solely to advance prosecution of the application to allowance and should not be considered as surrendering equivalents of the territory between the claim prior to the present amendment and the amended claim. Further, no acquiescence as to the propriety of the Examiner's rejection is made by the present amendment. All other amendments to the claims which have been made in this amendment, and which have not been specifically noted to overcome a rejection based upon the prior art, should be considered to have been made for a purpose unrelated to patentability (e.g., for correcting grammatical errors), and no estoppel should be deemed to attach thereto.

P24195.A10

Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully submitted,
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A handwritten signature in cursive script that reads "Will. Boshnick".

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